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**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,

Plaintiff,

v.

JOSHUA A. MARTINEZ,

Defendant.

No. 2:21-cr-00219-APG-DJA

**Plea Agreement Pursuant to Fed. R. Crim. P.
11(c)(1)(A) and (B)**

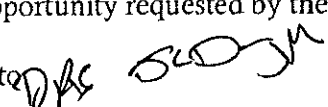
This plea agreement between Joshua A. Martinez (“defendant”) and the United States Attorney’s Office for the District of Nevada (the “USAO”) sets forth the parties’ agreement regarding the criminal charges referenced herein and the applicable sentences and fines in the above-captioned case. This agreement binds only defendant and the USAO and does not bind the district court, the U.S. Probation Office, or any other federal, state, local, or foreign prosecuting, enforcement, administrative, or regulatory authorities. This agreement does not prohibit the USAO or any agency or third party from seeking any other civil or administrative

1 remedies, including administrative forfeiture or civil forfeiture *in rem* actions, directly or
2 indirectly against defendant or defendant's property.

3 This agreement becomes effective upon signature by defendant, defendant's counsel, and
4 an Assistant United States Attorney.

5 **I. DEFENDANT'S OBLIGATIONS**

6 1. Defendant agrees to:

7 a. At the earliest opportunity requested by the USAO and provided by the
8 district court, appear and plead guilty to 

9 i. ~~Count 1~~ ^{Count 2} charging Felon in Possession of a Firearm in violation of 18
10 U.S.C. § 922(g)(1) and 924(a)(2).

11 b. Stipulate to the facts agreed to in this agreement;

12 c. Abide by all agreements regarding sentencing contained in this agreement;

13 d. Not seek to withdraw defendant's guilty pleas once they are entered;

14 e. Appear for all court appearances, surrender as ordered for service of
15 sentence, obey all conditions of any bond, and obey any other ongoing court order in this matter;

16 f. Not commit any federal, state, or local crime;

17 g. Be truthful always with the U.S. Probation and Pretrial Services Offices
18 and the Court;

19 h. Before and after sentencing, upon request by the Court, the USAO, or the
20 Probation Office, provide accurate and complete financial information, submit sworn
21 statements, and/or give depositions under oath concerning defendant's assets and defendant's
22 ability to pay. As part of the required disclosure, defendant agrees to provide all financial
23 information and authorizations requested by the Probation Office for preparation of the
24 Presentence Report. Defendant further agrees that, upon filing of this agreement, the USAO is

1 authorized to obtain defendant's credit report. Defendant will also complete a financial form
2 provided by the USAO, to include all supporting documentation, and return it to the USAO
3 within three (3) weeks from entry of the plea. Defendant agrees that the district court may enter
4 any order necessary to effectuate or facilitate disclosure of defendant's financial information; and

5 i. To facilitate payment of any fine, restitution, or assessment, surrender
6 assets, defendant agrees to voluntarily release funds and property under defendant's control or in
7 which defendant has any property interest, before and after sentencing, to pay any fine or
8 restitution identified in this agreement, agreed to by the parties, or ordered by the Court.

9 II. THE USAO'S OBLIGATIONS

10 2. The USAO agrees to:

- 11 a. Stipulate to facts agreed to in this agreement;
- 12 b. Abide by all agreements regarding sentencing contained in this agreement;
- 13 c. At sentencing, provided that defendant demonstrates an acceptance of
14 responsibility for the offense up to and including the time of sentencing, recommend a two-level
15 reduction in the applicable sentencing guidelines offense level, pursuant to USSG § 3E1.1, and
16 move for an additional one-level reduction if available under that section;
- 17 d. At sentencing, move to dismiss the remaining counts of the indictment as
18 against defendant. Defendant agrees, however, that the district court may consider any dismissed
19 charges in determining the applicable sentencing guidelines range, the propriety and extent of
20 any departure from that range, and the sentence to be imposed; and
- 21 e. Not bring any additional charges against defendant arising out of the
22 factual basis set forth in this agreement. However, the USAO reserves the right to prosecute
23 defendant for (a) any crime of violence as defined by 18 U.S.C. § 16; and (b) any criminal tax
24 violations (including conspiracy to commit such violations chargeable under 18 U.S.C. § 371).

1 Defendant agrees that the district court at sentencing may consider any uncharged conduct in
2 determining the applicable sentencing guidelines range, the propriety and extent of any departure
3 from that range, and the sentence to be imposed after consideration of the sentencing guidelines
4 and all other relevant factors under 18 U.S.C. § 3553(a).

5 III. ELEMENTS OF THE OFFENSES

6 3. The elements of Felon in Possession of a Firearm in violation of 18 U.S.C.
7 § 922(g)(1) are the following:

8 **First**, the defendant knowingly possessed a firearm;

9 **Second**, the firearm had been shipped from one state to another;

10 **Third**, at the time the defendant possessed the firearm, the defendant had been
11 convicted of a crime punishable by imprisonment for a term exceeding one year;
and

12 **Fourth**, at the time the defendant possessed the firearm, the defendant knew he
13 had been convicted of the felony.

14 *See Model Crim. Jury Instr. 9th Cir. 8.65A (approved 5/2020).*

15 IV. CONSEQUENCES OF CONVICTION

16 4. **Maximum and Minimum Statutory Penalties:**

17 Defendant understands that the statutory maximum sentence the district court can
18 impose for a violation of 18 U.S.C. § 922(g)(1) is not more than 10 years, a three-year period of
19 supervised release; a fine of \$250,000, or twice the gross gain or gross loss resulting from the
20 offense, whichever is greatest; and a mandatory special assessment of \$100.

21 5. **Parole Abolished:** Defendant acknowledges that defendant's prison sentence
22 cannot be shortened by early release on parole because parole has been abolished.

23 6. **Supervised Release:** Defendant understands that supervised release is a period of
24 time following imprisonment during which defendant will be subject to various restrictions and
requirements. Defendant understands that if defendant violates one or more of the conditions of

1 any supervised release imposed, defendant may be returned to prison for all or part of the term of
2 supervised release authorized by statute for the offenses that resulted in the term of supervised
3 release, which could result in defendant serving a total term of imprisonment greater than the
4 statutory maximum stated above.

5 7. **Factors under 18 U.S.C. § 3553:** Defendant understands that the district court
6 must consider the factors set forth in 18 U.S.C. § 3553(a) in determining defendant's sentence.
7 However, the statutory maximum sentence and any statutory minimum sentence limit the
8 district court's discretion in determining defendant's sentence.

9 8. **Potential Collateral Consequences of Conviction:** Defendant understands that,
10 by pleading guilty, defendant may be giving up valuable government benefits and valuable civic
11 rights, such as the right to vote, the right to possess a firearm, the right to hold office, and the
12 right to serve on a jury. Defendant understands that once the district court accepts defendant's
13 guilty plea, it will be a federal felony for defendant to possess a firearm or ammunition.
14 Defendant understands that the conviction in this case may also subject defendant to various
15 other collateral consequences, including but not limited to revocation of probation, parole, or
16 supervised release in another case and suspension or revocation of a professional license.
17 Defendant understands that unanticipated collateral consequences will not serve as grounds to
18 withdraw defendant's guilty pleas.

19 9. **Potential Removal/Deportation Consequences of Conviction:** Defendant
20 understands that, if defendant is not a United States citizen, the felony conviction in this case
21 may subject defendant to removal, also known as deportation, which may, under some
22 circumstances, be mandatory; denial of citizenship; and denial of admission to the United States
23 in the future. The district court cannot advise defendant fully regarding the immigration
24 consequences of the felony conviction in this case, but defendant's attorney has advised him

1 about the deportation risks of his guilty plea. Defendant understands that unexpected
 2 immigration consequences will not serve as grounds to withdraw defendant's guilty pleas.

3 V. FACTUAL BASIS

4 10. Defendant admits that defendant is, in fact, guilty of the offense to which
 5 defendant is agreeing to plead guilty. Defendant acknowledges that if defendant elected to go to
 6 trial instead of pleading guilty, the USAO could prove defendant's guilt beyond a reasonable
 7 doubt. Defendant further acknowledges that defendant's admissions and declarations of fact set
 8 forth below satisfy every element of the charged offense. Defendant waives any potential future
 9 claim that the facts defendant admitted below are insufficient to satisfy the elements of the
 10 charged offense. Defendant admits and declares under penalty of perjury that the facts set forth
 11 below are true and correct:

12 A. On or about June 26, 2019, Martinez was convicted of a felony offense
 13 punishable by a term of imprisonment exceeding one year, that is, Attempt Carrying a
 14 Concealed Weapon (District Court, Clark County, Nevada, Case No. C-17-326611-1). Martinez
 15 knew when he was convicted that he had been convicted of a felony offense and that he could no
 16 longer possess a firearm.

17 B. Nonetheless, on or about February 19, 2021, in the State of Nevada,
 18 Martinez knowingly possessed a firearm, that is, a Century Arms rifle, Serial No.
 19 ~~RA5470226873~~. The rifle was an AK47 style "semiautomatic firearm capable of accepting a
 20 large round magazine," meaning, "a semiautomatic firearm that has the ability to fire many
 21 rounds without reloading because at the time of the offense . . . a magazine or similar device that
 22 could accept more than 15 rounds of ammunition was in close proximity to the firearm." USSG
 23 § 2K2.1, Application Note 2.
 24

VI. SENTENCING FACTORS

11. **Discretionary Nature of Sentencing Guidelines:** Defendant understands that in determining Defendant's sentence, the district court is required to calculate the applicable sentencing guidelines range and to consider that range, possible departures under the sentencing guidelines, and the other sentencing factors set forth in 18 U.S.C. § 3553(a). Defendant understands that the sentencing guidelines are advisory only, that defendant cannot have any expectation of receiving a sentence within the calculated sentencing guidelines range, and that after considering the sentencing guidelines and the other § 3553(a) factors, the district court will be free to exercise its discretion to impose any sentence it finds appropriate between the mandatory minimum and up to the maximum set by statute for the crime of conviction.

12. **Offense Level Calculations:** The parties jointly agree and stipulate that, in calculating defendant's advisory guidelines sentencing range, the Court should use the following base offense level and adjustments; acknowledge that these stipulations do not bind the district court; and agree that they will not seek to apply or advocate for the use of any other base offense level or any other specific offense characteristics, enhancements, or reductions in calculating the advisory guidelines range.

Felon in Possession of a Firearm, 18 U.S.C. § 922(g)(1)

Offense Level Calculation		USSG
Base Offense	20	§ 2K2.1(b)(4)(B) (defendant possessed a semiautomatic firearm capable of accepting a large capacity magazine)
Adjusted Offense Level	20	

1 13. **Reduction for Acceptance of Responsibility:** Under USSG § 3E1.1(a), the USAO
2 will recommend that defendant receive a two-level downward adjustment for acceptance of
3 responsibility unless defendant (a) fails to truthfully admit facts establishing a factual basis for the
4 guilty plea when defendant enters the plea; (b) fails to truthfully admit facts establishing the
5 amount of restitution owed when defendant enters the guilty plea; (c) fails to truthfully admit
6 facts establishing the forfeiture allegations when defendant enters the guilty plea; (d) provides
7 false or misleading information to the USAO, the Court, Pretrial Services, or the Probation
8 Office; (e) denies involvement in the offense or provides conflicting statements regarding
9 defendant's involvement or falsely denies or frivolously contests conduct relevant to the offenses;
10 (f) attempts to withdraw defendant's guilty plea; (g) commits or attempts to commit any crime;
11 (h) fails to appear in court; or (i) violates the conditions of pretrial release.

12 14. Under USSG § 3E1.1(b), if the district court determines that defendant's total
13 offense level before operation of § 3E1.1(a) is 16 or higher, and if the USAO recommends a two-
14 level downward adjustment pursuant to the preceding paragraph, the USAO will move for an
15 additional one-level downward adjustment for acceptance of responsibility before sentencing
16 because defendant communicated defendant's decision to plead guilty in a timely manner that
17 enabled the USAO to avoid preparing for trial and to efficiently allocate its resources.

18 15. **Criminal History Category.** Defendant acknowledges that the district court may
19 base defendant's sentence in part on defendant's criminal record or criminal history. The district
20 court will determine defendant's criminal history category under the sentencing guidelines.

21 16. **Additional Sentencing Information:** The stipulated sentencing guidelines
22 calculations are based on information now known to the parties. Defendant understands that
23 both defendant and the USAO are free to (a) supplement the facts in this agreement by supplying
24 relevant information to the U.S. Probation and Pretrial Services Offices and the district court

1 regarding the nature, scope, and extent of defendant's criminal conduct and any aggravating or
2 mitigating facts or circumstances; and (b) correct any and all factual misstatements relating to the
3 district court's sentencing guidelines calculations and determination of sentence. While this
4 paragraph permits both the USAO and defendant to submit full and complete factual
5 information to the U.S. Probation and Pretrial Services Offices and the district court, even if that
6 factual information may be viewed as inconsistent with the facts agreed to in this agreement, this
7 paragraph does not affect defendant's and the USAO's obligations not to contest the facts agreed
8 to in this agreement. Good faith efforts to provide truthful information or to correct factual
9 misstatements shall not be grounds for defendant to withdraw defendant's guilty pleas.

10 Defendant acknowledges that the U.S. Probation Office may calculate the sentencing
11 guidelines differently and may rely on additional information it obtains through its investigation.
12 Defendant also acknowledges that the district court may rely on this and other additional
13 information as it calculates the sentencing guidelines range and makes other sentencing
14 determinations, and the district court's reliance on such information shall not be grounds for
15 defendant to withdraw defendant's guilty plea.

16 VII. POSITIONS REGARDING SENTENCING

17 17. The USAO will recommend that the district court sentence defendant to the low-
18 end of the advisory guideline range as determined by the district court. Defendant may argue
19 for a downward variance pursuant to 18 U.S.C. § 3553.

20 18. Defendant acknowledges that the district court does not have to follow the
21 recommendation of either party.

22 19. Notwithstanding its agreement to recommend a sentence as described above, the
23 USAO reserves its right to defend any lawfully imposed sentence on appeal or in any post-
24 conviction litigation.

1 20. If defendant commits any act that results in the Court finding that defendant is
2 not entitled to a downward adjustment for acceptance of responsibility, the USAO is entitled to
3 argue for any sentence it deems appropriate under 18 U.S.C. § 3553(a). In any such event,
4 Defendant remains bound by the provisions of this agreement and shall not have the right to
5 withdraw defendant's guilty plea.

6 **VIII. WAIVER OF CONSTITUTIONAL RIGHTS**

7 21. Defendant understands that by pleading guilty, defendant gives up the following
8 rights:

- 9 a. The right to persist in a plea of not guilty;
- 10 b. The right to a speedy and public trial by jury;
- 11 c. The right to be represented by counsel—and, if necessary, have the court
12 appoint counsel—at trial. Defendant understands, however, that, defendant retains the right to
13 be represented by counsel—and, if necessary, have the court appoint counsel—at every other
14 stage of the proceeding;
- 15 d. The right to be presumed innocent and to have the burden of proof placed
16 on the USAO to prove defendant guilty beyond a reasonable doubt;
- 17 e. The right to confront and cross-examine witnesses against defendant;
- 18 f. The right to testify and to present evidence in opposition to the charges,
19 including the right to compel the attendance of witnesses to testify;
- 20 g. The right not to be compelled to testify, and, if defendant chose not to
21 testify or present evidence, to have that choice not be used against defendant; and
- 22 h. The right to pursue any affirmative defenses, Fourth Amendment or Fifth
23 Amendment claims, and any other pretrial motions that have been filed or could be filed.
- 24

IX. WAIVER OF APPELLATE RIGHTS

22. **Waiver of Appellate Rights.** Defendant knowingly and expressly waives: (a) the right to appeal any sentence imposed within or below the applicable Sentencing Guideline range as determined by the district court; (b) the right to appeal the manner in which the district court determined that sentence on the grounds set forth in 18 U.S.C. § 3742; and (c) the right to appeal any other aspect of the conviction, including but not limited to the constitutionality of the statutes of conviction; any other aspect of the sentence; and any order of restitution or forfeiture.

23. Defendant reserves only the right to appeal any portion of the sentence that is an upward departure or variance from the applicable Sentencing Guideline range as determined by the district court.

24. **Waiver of Post-Conviction Rights.** Defendant also knowingly and expressly waives all collateral challenges, including any claims under 28 U.S.C. § 2255, to defendant's conviction, sentence, and the procedure by which the district court adjudicated guilt and imposed sentence, except non-waivable claims of ineffective assistance of counsel.

25. **Preservation of Evidence:** Defendant acknowledges that the USAO and the agencies investigating this case are not obligated or required to preserve any evidence obtained in the investigation of this case.

X. RESULT OF WITHDRAWAL OF GUILTY PLEA
OR VACATUR/REVERSAL/SET-ASIDE OF CONVICTION

26. **Consequence of withdrawal of guilty plea:** Defendant agrees that if, after entering guilty pleas pursuant to this agreement, defendant seeks to withdraw and succeeds in withdrawing defendant's guilty plea on any basis other than a claim and finding that entry into this agreement was involuntary, then (a) the USAO will be relieved of all of its obligations under this agreement and (b) should the USAO choose to pursue any charge that was either dismissed

1 or not filed as a result of this agreement, then (i) any applicable statute of limitations will be
2 tolled between the date of defendant's signing of this agreement and the filing commencing any
3 such action; and (ii) defendant waives and gives up all defenses based on the statute of
4 limitations, any claim of pre-indictment delay, or any speedy trial claim with respect to any such
5 action, except to the extent that such defenses existed as of the date of defendant's signing this
6 agreement.

7 27. **Consequence of vacatur, reversal, or set-aside:** Defendant agrees that if
8 defendant's conviction is vacated, reversed, or set aside, both the USAO and defendant will be
9 released from all their obligations under this agreement, except that, should the USAO choose to
10 pursue any charge that was either dismissed or not filed as a result of this agreement, then (i) any
11 applicable statute of limitations will be tolled between the date of defendant's signing of this
12 agreement and the filing commencing any such action; and (ii) defendant waives and gives up all
13 defenses based on the statute of limitations, any claim of pre-indictment delay, or any speedy
14 trial claim with respect to any such action, except to the extent that such defenses existed as of
15 the date of defendant's signing this agreement.

16 XI. BREACH OF AGREEMENT

17 28. Defendant agrees that if, at any time after this agreement becomes effective,
18 defendant knowingly violates or fails to perform any of defendant's obligations under this
19 agreement ("a breach"), the USAO may declare this agreement breached. All of defendant's
20 obligations are material, a single breach of this agreement is sufficient for the USAO to declare a
21 breach, and defendant shall not be deemed to have cured a breach without the express agreement
22 of the USAO in writing. If the USAO declares this agreement breached, and the district court
23 finds such a breach to have occurred, then: (a) if defendant has previously entered guilty pleas
24 pursuant to this agreement, defendant will remain bound by the provisions of this agreement and

1 will not be able to withdraw the guilty pleas, and (b) the USAO will be relieved of all its
2 obligations under this agreement.

3 29. Following the Court's finding of a knowing breach of this agreement by defendant,
4 should the USAO choose to pursue any charge that was either dismissed or not filed as a result
5 of this agreement, then:

6 a. Defendant agrees that any applicable statute of limitations is tolled between
7 the date of defendant's signing of this agreement and the filing commencing any such action.

8 b. Defendant waives and gives up all defenses based on the statute of
9 limitations, any claim of pre-indictment delay, or any speedy trial claim with respect to any such
10 action, except to the extent that such defenses existed as of the date of defendant's signing this
11 agreement.

12 c. Defendant agrees that: (i) any statements made by defendant, under oath,
13 at the guilty plea hearing (if such a hearing occurred prior to the breach); (ii) the agreed to factual
14 basis statement in this agreement; and (iii) any evidence derived from such statements, shall be
15 admissible against defendant in any such action against defendant, and defendant waives and
16 gives up any claim under the United States Constitution, any statute, Federal Rule of Evidence
17 410, Federal Rule of Criminal Procedure 11(f), or any other federal rule, that the statements or
18 any evidence derived from the statements should be suppressed or are inadmissible.

19
20 **XII. COURT AND UNITED STATES PROBATION
AND PRETRIAL SERVICES OFFICE NOT PARTIES.**

21 30. Defendant understands that the Court and the U.S. Probation and Pretrial
22 Services Office are not parties to this agreement and need not accept any of the USAO's
23 sentencing recommendations or the parties' agreements to facts or sentencing factors.
24

1 31. Defendant understands that both defendant and the USAO are free to argue on
2 appeal and collateral review that the district court's sentencing guidelines calculations and the
3 sentence it chooses to impose are not error.

4 32. Defendant understands that even if the district court ignores any sentencing
5 recommendation, finds facts or reaches conclusions different from those agreed to by the parties,
6 or imposes any sentence up to the maximum established by statute, defendant cannot, for that
7 reason, withdraw defendant's guilty plea, and defendant will remain bound to fulfill all
8 defendant's obligations under this agreement. Defendant understands that no one—not the
9 prosecutor, defendant's attorney, or the Court—can make a binding prediction or promise
10 regarding the sentence defendant will receive, except that it will be within the statutory
11 maximum.

12 XIII. ADDITIONAL ACKNOWLEDGMENTS

13 33. The Defendant acknowledges that:

14 a. Defendant read this agreement and defendant understands its terms and
15 conditions.

16 b. Defendant had adequate time to discuss this case, the evidence, and this
17 agreement with defendant's attorney.

18 c. Defendant carefully and thoroughly discussed all terms of this agreement
19 with defendant's attorney.

20 d. Defendant understands the terms of this agreement and voluntarily agrees
21 to those terms.

22 e. Defendant has discussed with defendant's attorney the following: the
23 evidence; defendant's rights; possible pretrial motions that might be filed; possible defenses that
24

1 might be asserted either prior to or at trial; the sentencing factors set forth in 18 U.S.C. 3553(a);
2 the relevant sentencing guidelines provisions; and consequences of entering into this agreement.

3 f. The representations contained in this agreement are true and correct,
4 including the factual basis for defendant's offense set forth in this agreement.

5 g. Defendant was not under the influence of any alcohol, drug, or medicine
6 that would impair defendant's ability to understand the agreement when defendant considered
7 signing this agreement and when defendant signed it.

8 34. Defendant understands that defendant alone decides whether to plead guilty or go
9 to trial, and defendant acknowledges that defendant has decided to enter defendant's guilty plea
10 knowing of the charges brought against defendant, defendant's possible defenses, and the
11 benefits and possible detriments of proceeding to trial.

12 35. Defendant understands that no promises, understandings, or agreements other
13 than those set forth in this agreement have been made or implied by defendant, defendant's
14 attorney, or the USAO, and no additional promises, agreements, or conditions shall have any
15 force or effect unless set forth in writing and signed by all parties or confirmed on the record
16 before the district court.

17 36. Defendant acknowledges that defendant decided to plead guilty voluntarily and
18 that no one threatened, coerced, or forced defendant to enter into this agreement.

19 37. Defendant is satisfied with the representation of defendant's attorney, and
20 defendant is pleading guilty because defendant is guilty of the charges and chooses to take
21 advantage of the promises set forth in this agreement and for no other reason.

XIV. PLEA AGREEMENT PART OF THE GUILTY PLEA HEARING

The parties agree that this agreement will be considered part of the record of defendant's guilty plea hearing as if the entire agreement had been read into the record of the proceeding.

AGREED AND ACCEPTED

UNITED STATES ATTORNEY'S OFFICE
FOR THE DISTRICT OF NEVADA

JASON M. FRIERSON
United States Attorney


DANIEL R. SCHIESS
Assistant United States Attorney


Date

/s/ Joshua A. Martinez
JOSHUA A. MARTINEZ
Defendant

June 12, 2023
Date

/s/ Joanne L. Diamond
JOANNE DIAMOND
Attorney for Defendant MARTINEZ

June 12, 2023
Date